In the District Court of the United States for the District of Oregon

C–16893

UNITED STATES OF AMERICA

v.

CLARKE T. WHEELBARGER, DEFENDANT

JURISDICTIONAL STATEMENT

The District Court of the United States for the District of Oregon entered its order and judgment dismissing the indictment in the above-entitled case on the 10th day of January 1947, for the reason and upon the grounds that the indictment failed to state facts sufficient to constitute a crime under the statutes of the United States in that the Emergency Price Control Act of 1942 as amended and extended (Pub. L. 421, 77th Cong., 2d Sess., 56 Stat. C 26, 50 U. S. C. A. App. 212, Pub. L, 383, 78th Cong., 2d Sess., 57 Stat. 566, Pub. L. 108, 79th Cong., 1st Sess., C. 214), had expired on June 30, 1946 and that as a result no valid indictment could thereafter be returned for offenses occurring prior thereto. The United States of America on the 8th day of February 1947, filed in the District Court its application for appeal to the Supreme Court of the

United States from the District Court's ruling. The United States contends that the Supreme Court of the United States has jurisdiction to review the District Court's judgment and order of dismissal by virtue of Title 18, U. S. C., Sec. 682 and Title 28, U. S. C. Sec. 345.

The District Court in constructing the Emergency Price Control Act, as amended and extended, failed to recognize and give effect to the saving clause provisions in either the Emergency Price Control Act of 1942, as amended June 30, 1945, Chap. 214, Sec. I, 59 Stat. 306, Title 50, App. U. S. C. Sec. 901 (b) or the general saving clause embraced in the Revised Statutes, Title I, U. S. C., Sec. 29, 29 (a), as amended March 22, 1944, Chap. 123, 58 Stat. 118, R. S. 5599. The Act of June 30, 1945, provided:

> *901. Purposes; time limit; applicability (Title 50, App. U. S. C.)*:
>
> (b) The provisions of this Act (sections 901–922, 923–946 of this Appendix), and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses com-

mitted, or rights or liabilities incurred, prior to such termination date, the provisions of this Act (said sections) and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Section 29, U. S. C., Title 1, provides:

29. Repeal of statutes as affecting existing liabilities (Title 1, U. S. C.):

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

Section 29 (a), U. S. C., Title 1, provides:

29a. *Saving clause: Limitations of actions and proceedings, both civil and crimi-*

nal, arising prior to repeal provisions of Revised Statutes:

All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in the Revised Statutes and covered by the repeal contained therein, shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

This case arose out of an alleged violation of M. P. R. No. 580, etc., issued pursuant to the Emergency Price Control Act of 1942, as amended and extended (supra). The indictment alleges that the defendant on the 11th day of September, 1945, sold a used automobile to a third person for a consideration in excess of the price allowed by the regulation. The indictment was returned and filed on the 16th day of September, 1946. The District Court's ruling was made in contravention of the Saving Clauses as contained in the Emergency Price Control Act of 1943, as amended and extended, and also in violation of the General Provisions of the Rev. Statutes, Title 1, U. S. C. Secs. 29 and 29 (a). District Court rulings involving validity of the U. S. Statutes are appealable direct to the Supreme Court of the United States by virtue of

Title 28, U. S. C. Sec. 682 and Title 28, U. S. C. Sec. 345. *U. S.* v. *Midstate Horticultural Co., 59 S. Ct. 412, 306 U. S. 161, 83 L. Ed. 563, U. S.* v. *Kapp, 58 S. Ct., 182, 302 U. S. 214, 22 L. Ed. 205.*

The United States contends that the questions involved are substantial because in effect the District Court has ruled that no indictments or informations can be brought for any violation of the Emergency Price Control Act of 1942, as amended and extended, occurring prior to June 30, 1946, unless the indictment or information had been returned and filed prior to that date. The effect of such a ruling is obvious and its result would be far reaching if allowed to stand.

There is hereby incorporated into this jurisdictional statement a transcript of the proceedings before the District Court and it is appended hereto. There was no written opinion rendered by the District Court so it will be necessary to refer to the transcript in determining the basis of the District Court's decision.

Dated at Portland, Oregon, this 8th day of February 1947.

Henry L. Hess,
HENRY L. HESS,
United States Attorney,
for the District of Oregon.
J. Robert Patterson,
J. ROBERT PATTERSON,
Assistant United States Attorney,
506 U. S. Court House, Portland, Oregon.

Endorsed: Filed February 8, 1947.

George J. Washington.

In the District Court of the United States for the District of Oregon

No. C–16893

UNITED STATES OF AMERICA

v.

CLARKE T. WHEELBARGER, DEFENDANT

OPINION

In his certificate to the Supreme Court, the United States Attorney has stated that I did not give my reasons for dismissing this indictment. Herewith I briefly state the grounds for my decision.

Since the decision in *Yakus* v. *United States,* 321 U. S. 414 (1944), I have presided at the trial of many OPA cases, and I became impressed with the great injustice of denying defendants the right to challenge the validity of the regulation or order under which they were being prosecuted.

The cases have presented a variety of circumstances, many involving most grievous oppression. It is absurd to think the average citizen can take his case before a special court, such as the Emergency Court of Appeals. The infinitesimal percentage of cases heard by that Court proves it. The joker in Section 204 (d) of the Price Control Act, upheld by the *Yakus* decision, is

that it covers *orders* as well as regulations. OPA has put out thousands of orders (nobody knows how many), some national in scope, others regional, local, and a great many directed to individuals. By that I mean a great number of people have been "ordered" individually and personally not to do this or that about their affairs. For example, a father was ordered not to do business with his son, solely because he was his son.

In none of these cases, under the Supreme Court ruling, could the citizen defend himself when sued by OPA or when prosecuted criminally at the instance of OPA, unless he had taken the circuitous, and in most cases utterly impossible, course of resorting to the Emergency Court of Appeals. When brought into court the citizen could not, under the *Yakus* decision, even challenge the jurisdictional validity of the order. Compare *Estep* v. *United States,* 327 U. S. 114.

And so, observing day by day the harsh workings of the *Yakus* decision, I determined that a rule of strict construction was justified, particularly in criminal cases, and that is the rule I applied in the present case. Much more by way of construction has been done in American-Anglo legal history to preserve natural right.

Dated February 20, 1947.

(S) CLAUDE MCCOLLOCH,
Judge.

Endorsed: Filed February 20, 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947